



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201327014**

Release Date: 7/5/2013

Date: April 9, 2013

UIL Code: 501.03-08

501.05-01

501.06-01

501.06-02

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from federal income tax under Internal Revenue Code section 501(a). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

Letter 4040(CG) (11-2005)
Catalog Number 47635Z

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Holly Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: February 21, 2013

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = State
C = State
D = Organic Program
E = Trademarked Organic Farming Method
G = Set of Standards
H = Certification Entity
M = Date 1
N = Date 2
q = Number
r = Number
s = Number
t = Dollar Amount

UIL:

501.03-08
501.05-01
501.06-01
501.06-02

Dear :

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code ("Code"). Based on the information provided, we have concluded that you do not qualify for exemption. The basis for our conclusion is set forth below.

This letter supersedes our letters dated May 4, 2012 and October 16, 2012, and considers your protests.

Letter 4036(CG) (11-2005)
Catalog Number 47630W

Issues

1. Do you meet the organizational test under section 501(c)(3) of the Code? No, for the reasons described below.
2. Do you meet the operational test under section 501(c)(3) of the Code? No, for the reasons described below.
3. Do you meet the requirements to be exempt under section 501(c)(5) of the Code? No, for the reasons described below.
4. Do you meet the requirements to be exempt under section 501(c)(6) of the Code? No, for the reasons described below.
5. Do you qualify for exemption under any other section of the Code? No, for the reasons described below.

Facts

You were originally incorporated in the state of B on M. Your organizing document stated, in pertinent part, that your purposes were:

- a) *To foster, encourage and improve E methods and practices of food production by (i) certifying growers, processors, merchants and distributors of E foodstuffs; (ii) supervising the production and processing of such foodstuffs, and (iii) carrying on other activities and educational programs as may be appropriate to certify growers, distributors, processors and merchants handling E foodstuffs and to supervise the production and processing of these products by enlisting the services of a consultant approved by the E Association.*
- b) *To operate exclusively for agricultural and horticultural purposes.*

Subsequently, you moved to the state of C and incorporated under the nonprofit laws of said state on N. The B corporation is currently being dissolved. You stated that you are operating the C corporation exactly as you did the B corporation.

The Articles of Incorporation filed in C list the same purposes as the B corporation with the added clause that you are "organized and operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code."

Your current by-laws state your purpose is to "promote E agriculture and verify its practice via a certification program".

E is an organic farming method that emphasizes the holistic development and interrelationships of the soil, plants and animals as a self-sustaining system. Features central to E agriculture include crop diversification, avoidance of chemical soil treatments and decentralized production and distribution.

You provided the following activity description with the estimated time spent on each:

- Educate, train and certify member operations on E practices and principles (Teach)— %

E farming is a very specific method of agricultural production defined by the G. It is a concept new to the United States marketplace. The standards exceed those required for organic certification required by the D. In order for a farm or product to be referred to as E, it must be certified annually through [you]. The certification process involves the submission of a production plan by the grower, an intensive on-site inspection of the farm by [you], and feedback for improvements from [you]. Each member is evaluated and provided consultation on how to advance and improve their crops and processing.

- Educate and promote certification to potential members (Grow)— %

A significant amount of work is spent educating non-certified agricultural producers with the goal of encouraging them to adopt E farming and processing methods. The education is accomplished by conducting workshops, making farm visits, appearing at tradeshow and developing educational materials to promote E farming.

- Educate consumers, media and retailer (Market) – %

Education of the marketplace about this new agricultural method is important. [You] provide accurate information about E agriculture and meet with key retailers/restaurateurs to educate them. [Your] website will expand to provide more information about member farms, their products and where they can be purchased.

- Maintain and defend the E certification mark (Protect) – %

[You] scan the marketplace for unauthorized use of the registered marks. Enforcement is viewed as an educational process. If a registered mark is

improperly used by a producer, you will engage them to inform them about E agriculture and the process of certification. These instances often result in the certification of the producer.

- Management of the Association – %

Administration duties necessary to manage [you] (i.e. budgeting, staffing, technology, etc).

You utilize a membership structure. Members must be farmers, processors or traders who are certified as E or are in conversion to E by [you] or those that are certified as organic or in conversion to organic by H. Members do not have voting rights and pay annual dues associated with certification services (based on application services, licensing assessment and inspection costs). You have g member farms, r member processors and s member traders.

You have a close relationship with H. H is a D accredited organic certifier that provides organic certification services. Although a separate entity, H shares the same staff and many of the same clients with you. The D provides a base minimum and a maximum ceiling to the definition of "organic" in the United States. The E standard of certification exceeds the maximum ceiling definition. Therefore, H provides the D accredited organic certification to E entities so that E producers can also legally label their product as organic.

You submitted a detailed fee schedule outlining the fees you charge to certify and annually license a farmer, processor, or trader as E. The fee schedule shows significant fees being charged based on the sales of the member up to a maximum fee of t.

Your financial data shows that virtually all of your revenue comes from fees from members. Revenue from fees amounted to over \$ annually in 20 and 20 .

Your major expenses are wages, certification costs and outside marketing services.

Law

Section 501(c)(3) of the Internal Revenue Code provides, in part, for the exemption from federal income tax of organizations organized and operated exclusively for charitable, religious or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 501(c)(5) of the Code provides for the exemption from federal income tax of labor, agricultural, or horticultural organizations.

Section 501(c)(6) of the Code provides for the exemption of business leagues, chambers of commerce, real estate boards, boards of trade, and professional football leagues (whether or not administering a pension fund for football players), which are not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such sections. If any organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its Articles of organization (a) limit the purposes of such organization to one or more exempt purposes; and (b) do not expressly empower the organization to engage otherwise than an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purpose.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(ii) of the Regulations states that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus to meet the requirements, an organization must establish that it is not organized or operated for the benefit of a private interest, such as designated individuals, the creator or his family, shareholders or the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(5)-1(a) of the Regulations provides that in order to be exempt as an organization described in section 501(c)(5) of the Code, an organization must not have net earnings inuring to the benefit of any member and have as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations.

Section 1.501(c)(6)-1 of the Regulations define a business league as an association of

persons (the term "Persons" includes legal entities such as trust and corporations) having a common business interest, whose purpose is to promote the common business interest and not to engage in a regular business of any kind ordinarily carried on for profit. Its activities are directed to the improvement of business conditions of one or more lines of business rather than the performance of particular services for individual persons.

Rev. Rul. 56-245, 1956-1 C.B. 204, holds that an organization formed to encourage better and more economical methods of raising fur bearing animals, to provide an orderly system for marketing the pelts of its members, and to create a public demand for their products, and which carries out its purposes by furnishing members educational materials on the breeding and raising of fur bearing animals and the marketing of pelts, procuring agreements from auction companies to market the products of its members and furnish them certain beneficial services in connection therewith, and conducting advertising to encourage the use of fur products, is exempt under section 501(c)(5) of the Code.

Revenue Ruling 68-182 indicates the Internal Revenue Service will not in similar cases follow the decision by the United States Court of Appeals, Seventh Circuit, in Pepsi-Cola Bottlers' Association Inc v. United States, 369 F.2d 250 (1966). In that case, the Court held that the Association, whose members are engaged in the bottling and sale of a single franchised soft drink product and whose purposes and activities were directed to the more efficient production and sale of that product, qualified under section 501(c)(6) of the Code. It is the position of the Service that organizations promoting a single brand or products within a line of business do not qualify for exemption under section 501(c)(6) of the Code.

Rev. Rul. 69-528, 1969-2 C.B. 127 concerned an organization formed to provide investment services on a fee basis exclusively to organizations exempt under section 501(c)(3) of the Code. The Service held that the organization did not qualify for exemption under section 501(c)(3) of the Code since it was regularly carrying on the business of providing investment services that would be unrelated trade or business if carried on by any of the tax-exempt organizations on whose behalf it operated. The revenue ruling noted that providing investment services on a regular basis for a fee was a trade or business ordinarily carried on for profit.

Rev. Rul. 70-80, 1970-1 C.B. 130 holds a nonprofit trade association of manufacturers in a particular line of business, which established minimum quality standards for its members' products which are sold under the association's registered trademark name is not exempt under 501(c)(6). The trademark is promoted by the organization in a way intended to give its members a competitive advantage over others in the same industry by claiming superior quality of the trademarked products. As the organization's principal activity is the promotion of the trademarked products through various advertising media,

the activity of the organization is deemed performance of particular services for its members rather than the improvement of business conditions of the industry as a whole.

Rev. Rul. 70-187, 1970-1 C.B. 131 provides a nonprofit organization formed by manufacturers of a particular product to conduct a program of testing and certification of the product to establish acceptable standards within the industry as a whole qualifies for exemption under section 501(c)(6) of the Code. The organization was formed by manufacturers of a particular product to establish acceptable standards for the product and to assure that the product is fairly described in advertising. The organization furnishes interested manufacturers specifications setting forth minimum quality and performance standards and conducts a program of testing and certification based on these standards. It permits manufacturers to display its 'seal of acceptance' on all product models that have been certified as meeting its standards. The organization offers its program to any interested manufacturer without requiring such manufacturer to become a member. Approximately 90 percent of the manufacturers in the industry participate in the program. The organization fixes its charges at amounts sufficient to defray only the cost of the program.

Rev. Rul. 70-372, 1970-2 C.B. 118, holds that an organization of agricultural producers formed to process individual farmer's milk production records for use in improving milk production does not qualify for exemption under section 501(c)(5) of the Code. The revenue ruling states that the processing of production and test records for individual farmers does not of itself better the conditions of those engaged in agricultural pursuits, improve the grade of their products, or develop a higher degree of efficiency in their operations. The services provided simply relieve the individual farmer of work that he would either have to perform himself or have performed for him.

In Rev. Rul. 70-535, 1970-2 C.B. 117, the organization entered into agreements with a number of tax exempt corporations to provide managerial, developmental, and consulting services to low and moderate income housing projects. The organization was held not exempt under section 501(c)(4) because its primary activity is carrying on a business by managing low and moderate income housing projects in a manner similar to organizations operated for profit. The fact that these services were being performed for tax exempt corporations did not change the business nature of the activity.

Rev. Rul. 72-369, 1972-2 C.B. 245 concerned an organization formed to provide managerial and consulting services for organizations exempt under section 501(c)(3) to improve the administration of their charitable programs. The organization entered into agreements with unrelated nonprofit organizations to furnish managerial and consulting services on a cost basis. The revenue ruling held that the fact that the services were provided at cost and solely for exempt organizations is not sufficient to characterize this activity as charitable within the meaning of section 501(c)(3). Therefore, the

organization did not qualify for exemption.

Rev. Rul. 74-518, 1974-2 C.B. 166, clarifies and distinguishes Rev. Rul. 70-372, *supra*, and holds that a nonprofit organization of dairy farmers, a member of the National Cooperative Dairy Herd Improvement Program sponsored by the U.S. Department of Agriculture, that derives its income from testing fees and membership assessments and that weighs and tests milk of members' cows and makes statistical information based on the tests available to members, nonmembers, and governmental agencies for use in improving milk production is exempt as an agricultural organization under section 501(c)(5) of the Code. The organization described in Rev. Rul. 70-372 benefited only its own members and not dairymen in general.

Revenue Ruling 76-206 states an organization formed to promote broadcasting of classical music in a particular community served a private rather than a public interest and did not qualify for exemption. The organization carried on a variety of activities including soliciting sponsors, soliciting subscriptions to the station's program guide, and distributing pamphlets and bumper stickers encouraging people to listen to the station. The organization's board of directors did not include any representatives of the for-profit radio station. The revenue ruling concludes that the organization's activities enable the radio station to increase its total revenues and therefore benefit the for-profit radio station in more than an incidental way.

Rev. Rule 81-127, 1981-1 C.B. 357 holds the certification activity of a chamber of commerce exempt under 501(c)(6) does not constitute unrelated business income. The chamber of commerce's primary purpose is to promote the commercial, financial, industrial and civic interests of a particular community. The certification activity (which only provides independent verification of the United States origin of exported goods) is a service provided to members and nonmembers (primarily freight forwarding companies with offices in the community served by the organization) for the same fee. The certification of export documents is considered to stimulate international commerce and promote the business conditions in the community generally and is thus deemed related to the organization's 501(c)(6) purpose.

Per Revenue Ruling 85-2, an organization is lessening the burdens of government only if (a) its activities are activities that a governmental unit considers to be its burdens; and (b) the activities actually lessen such governmental burden. An organization must demonstrate that a government unit considers the organization to be acting on the government's behalf, thereby actually freeing up government assets. An activity is a burden of government only if there is an objective manifestation by a government unit that it considers the activities of the organization to be its burden (Revenue Ruling 85-1). The government must formally recognize the organization and its functions to be considered a governmental burden.

Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), held that the presence of a single nonexempt purpose, if substantial in nature, will preclude tax exemption under section 501(c)(3) of the Code.

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court held that the organization did not qualify for tax exemption under section 501(c)(3) of the Code. In this case, the B.S.W. Group, Inc. was formed for the purpose of providing consulting services primarily in the area of health, housing, and vocational skills and cooperative management. The consulting clients were tax-exempt organizations. Consulting services were provided at or close to cost, however, fees were sufficiently high to enable B.S.W. to retain at least a "nominal" administrative fee. The Internal Revenue Service denied exemption to the organization under section 501(c)(3) because the organization did not meet the operational test of Income Tax Regulations 1.501(c)(3)-1(c), since it was primarily engaged in an activity which is characteristic of a trade or business. The Court agreed with the Service's adverse ruling, noting that B.S.W.'s activity constitutes the conduct of a consulting business of the sort which is ordinarily carried on by commercial ventures organized for profit.

In National Muffler Dealers Association v. United States, 440 U.S. 472 (1979), the Supreme Court held that an association of a particular brand name of muffler dealers did not qualify for IRC 501(c)(6) status because it was not engaged in the improvement of business conditions of a line of business.

In Guide International Corporation v. United States, 948 F.2d 360 (7th Cir. 1991), the court concluded that an association of computer users did not qualify for exemption under IRC 501(c)(6) because it essentially benefited users of IBM equipment.

Application of Law

You are not described in Section 501(c)(3) of the Code because you are not organized and operated exclusively for charitable, religious or educational purposes and the benefit to private individuals (members) is more than insubstantial.

You do not satisfy the requirements of section 1.501(c)(3)-1(a)(1) of the Regulations because you do not meet the organizational, nor the operational test.

You do not satisfy the "organizational test" because your articles do not limit your purposes to those purposes which are listed within the meaning of section 501(c)(3) of the Code as required by section 1.501(c)(3)-1(b)(1)(i) of the Regulations. While your Articles indicate the organization is organized for charitable purposes, it also states the organization is organized for fostering, encouraging and improving E methods/practices of food production for growers, processors, merchants and distributors; certification of the growers, processors, merchants and distributors; supervising the production and

processing of the products certified and operating exclusively for agricultural and horticultural purposes. None of the specific purposes listed are charitable or educational within the meaning of section 501(c)(3).

You do not meet the "operational test" requirements of section 1.501(c)(3)-1(c)(1) of the Regulations because more than an insubstantial portion of your activities are directed toward certifying your members' farms and products. These activities are not in furtherance of an exempt purpose. The majority of your time (%) will be spent on providing E certification services to members which includes feedback and recommendations on product improvement.

In contradiction to section 1.501(c)(3)-1(d)(ii) of the Regulations, your certification and other services provided to members create a substantial benefit to your individual members. By certifying their farms and products as E, they are gaining a benefit over other similarly situated commercial entities. Therefore, a substantial portion of your activities promote private interests, and not the interests of the public.

The facts show that you are providing services for a fee in a commercial manner. Like the organizations described in Revenue Rulings 69-528, 70-535, and 72-369, you are providing business services on a regular basis for a fee that constitutes the operation of a trade, or business in a commercial manner.

As part of your certification process, you provide an intensive on-site inspection of the farm and provide feedback for improvements. Each member is evaluated and provided consultation on how to advance and improve their crops and processing. Similar to the organization denied exemption in B.S.W. Group, Inc. v. Commissioner, you are providing consulting services for a fee. Like the organization in the court case, your activities are characteristic of a trade or business and are commercial in nature.

Additional time (%) is spent on promoting the E process to potential new members, educating the marketplace and retailers and protecting the registered certification mark. Promoting, protecting, and marketing a specific trademarked product is further evidence that you are operating in a commercial manner for the benefit of your members.

As stated previously, your activities benefit your members' business pursuits. The services provided certify your members' products as meeting the E standard which furthers their commercial appeal. Your other activity promotes the E standard and markets it to consumers, also furthering the members' business interests. The fact that your largest expense is outside marketing verifies that this is a substantial activity. This activity, like that of the organization described in Revenue Ruling 76-206, serves a private rather than a public interest.

The above facts show that you have a substantial nonexempt purpose. As explained in

Better Business Bureau of Washington D.C., Inc. v. United States, the presence of a single nonexempt purpose, if substantial in nature, will preclude tax exemption under section 501(c)(3) of the Code.

Applicant's Position

You maintain you are organized and operated for charitable purposes under section 501(c)(3) of the Code. Specifically, you consider an important element of your mission to be consumer protection of food sources. You contend that by certifying, maintaining, and upholding the registered mark of E agriculture with its growing standards, you provide assurance to your members and food consumers that the food is safe. You indicate the support to the U.S. consumer is equal to that of members.

You maintain that the certification services provided to members constitute education and training within the meaning of section 501(c)(3) of the Code. You consider the advancement of E agriculture as beneficial to the public interest. Therefore, you contend the protection of the food supply serves to lessen the burdens of government and provides a healthy food supply.

In addition, you submitted a list of several organizations that are exempt under section 501(c)(3) that have similar purposes and provide the same services as you. You indicate you are the only organization in the group not to have been granted exemption under 501(c)(3) of the Code and feel such recognition by the Internal Revenue Service is warranted.

Service Response to Applicant's Position

We disagree with your position. Your certification process is a substantial purpose and your primary activity. The instruction and training you provide to your members is solely for the purpose of certifying them as E. Any education provided is merely incidental to your primary purpose of certification. In addition, any instruction or recommendations made in connection with the process serve to enable certification of members' products and improve the grade of their products.

The E mark constitutes a brand name of organic growing. While the public may receive some benefit from a level of food safety that results from certification, this is incidental to your primary purpose of certifying and promoting the E products and farms.

You suggest the organization is lessening the burdens of government by providing certification services. However, you do not meet the factors described in Revenue Ruling 85-2. Specifically, you have failed to demonstrate that (a) your activities are activities that a governmental unit considers to be its burden; and (b) the activities actually lessen such governmental burden.

You indicated that you are aware of several organizations with purposes and activities similar to yours that have received exemption under section 501(c)(3) of the Code. We cannot rely on the status of other entities or use their status as precedent when determining if an organization meets the requirements for exemption. We must rely on the facts and circumstances of each individual case when determining exemption. Based on established precedent, and the facts and circumstances of your case, you do not qualify for exemption under section 501(c)(3) of the Code.

Applicant's Protest

During the initial 30-day protest period, you submitted Form 1024 requesting exemption under section 501(c)(5) of the Code.

Your application for exemption under section 501(c)(5) was not substantially different than your application for exemption under section 501(c)(3). The facts regarding your activities and operations remained materially the same.

Service Response to Applicant's Protest

You are not described in section 501(c)(5) of the Code. Your primary purpose and activity continues to be the certification of member farms and products for a fee; not for the betterment of the conditions of those engaged in agriculture, the improvement of the grade of their products, and the development of a higher degree of efficiency in their respective occupations, as described in section 1.501(c)(5)-1(a) of the Regulations.

You are not similar to the organization described in Rev. Rul. 56-245, *supra*, because your primary purpose and activity is not encouraging and educating members on more economical methods of producing agriculture. Instead, your primary activity is certifying members' farms and products. Any education that is provided is incidental to this primary purpose. As explained above, this activity is conducted in a commercial manner which precludes exemption under section 501(c)(5) as well as 501(c)(3).

Your activities benefit your own members and not the agricultural industry in general. As discussed in Revenue Rulings 70-372 and 74-518, providing a service that benefits your members individually and does not of itself better the conditions of the industry in general does not qualify for exemption under section 501(c)(5) of the Code. In summary, your certification service is your primary purpose and activity. You are providing this service similar to the operation of a trade or business in a commercial manner which is not an exempt purpose under section 501(c)(5). In addition, your activities substantially benefit your individual members and not the industry in general.

Applicant's Second Protest

After the second proposed denial was issued and during the subsequent 30-day protest period, you submitted Form 1024 requesting exemption under section 501(c)(6) of the Code.

You indicate you exist for the purpose of improving conditions in the farming industry in general by encouraging E practices to improve the vitality of crops, contribute to the sustainability of the land and provide the healthiest food. You indicate that you engage in a variety of activities to further your purposes including: educating the public about E farming, fostering standards through your certification program (to the public) and advocating for the farming industry and E in particular.

You amended your Articles of Incorporation to reflect a section 501(c)(6) purpose. You also amended your Bylaws. Membership (Article II, Section 1) is now open to any individual or organization interested in the farming or food industries.

You maintain section 501(c)(6) purposes are served by the open nature of your membership and access to activities. You assert your activities are not about helping manufacturers sell their products/promote their businesses, but to promote the farming industry as a whole.

You contend your certification program aids farms and processing companies to improve their farming methods and the quality of their food products as well as provide a single definition of E in the marketplace. You indicate that by encouraging farmers to achieve certification and consumers to purchase the E produced products, you further your vision to elevate the status and importance of the farming industry.

You indicate you seek to raise the profile of E farming through your educational activities (i.e. educational resources, workshops, conferences) and advocacy.

You maintain you are similar to the organization described in Rev. Rul. 70-187 by establishing standards and conducting a program of testing and certification (open to anyone in the industry regardless of membership) based on the standards developed.

You also identify your activities with the organization in Rev. Rul. 81-127 which indicated a section 501(c)(6) organization's certification program income did not constitute unrelated business income but furthered the organization's exempt purpose.

Service Response to Applicant's Second Protest

You are not described in section 501(c)(6) of the Code. Your primary purpose and activity is the performance of certification services of the E trademarked brand in a

commercial manner. You do not meet the requirements of section 1.501(c)(6)-1 of the Regulations because you are not operating for the improvement of business conditions of one or more lines of business. Instead you perform particular services for individuals/entities.

You state your purpose and activities are to promote E, encourage buying E products and raise the profile of E farming. You are operating to promote a trademarked process/products which furthers the specific business interests of those involved in E growing. E is a trademarked process/product. You do not operate to promote the farming industry as a whole. You operate to promote the business interests of those involved in E. Therefore, you are deemed to promote the private interests of those individuals and not the farming and agricultural industry as a whole.

Your activities have not substantially changed. You have amended your membership requirements. However, the change is unlikely to result in any substantial change to member numbers or have any effect on the activities of the organization. Since the organization focuses on E, a trademarked process, those interested in your certification services and activities will remain essentially the same.

You are similar to the organizations in Revenue Ruling 68-182, 70-80 and 83-164. Like those organizations, your primary purpose and principal activity is the promotion of trademarked products. The E trademark is promoted by the organization in a way intended to give those it certifies a competitive advantage over others in the farming industry.

You are also similar to the organizations in National Muffler Dealers Association v. United States, 440 U.S. 472 (1979), and Guide International Corporation v. United States, 948 F.2d 360 (7th Cir. 1991), since your sole purpose is to promote a particular brand.

You stated you are similar to the organization described in Rev. Rul. 70-187. However, the organization in the Revenue Ruling conducted a certification program of a product (not a brand) to establish acceptable standards within the industry as a whole. Also, the organization in the ruling fixed its charges at amounts sufficient to defray only the cost of the program. In contrast, you charge fees based on a percentage of members' sales similar to a commercial business. Also unlike the organization in this ruling, you certify and promote a particular brand of product. Promotion of a trademark brand product/process does not meet the standards under section 501(c)(6) as described above in Revenue Ruling 70-80.

You also stated you are similar to the organization described in Rev. Rul. 81-127. The organization in this ruling was already an approved exempt organization which engaged in activities to promote section 501(c)(6) purposes. The certification program conducted

by the entity in the ruling was not its primary activity and was found to further its other 501(c)(6) purposes. Furthermore, the certification did not target a specific brand and it was not conducted in a commercial manner. Therefore, revenue gained from the certification program was not found to be Unrelated Business Income(UBI). You are not like the entity described in this ruling because your program certifies and promotes a specific brand and is your primary purpose. Your certification process does not further other 501(c)(6) purposes.

You are also similar to the organizations in National Muffler Dealers Association v. United States, 440 U.S. 472 (1979), and Guide International Corporation v. United States, 948 F.2d 360 (7th Cir. 1991), since your sole purpose is to promote a particular brand, E.

Conclusion

The facts show that you do not meet the organizational test or the operational test to qualify for exemption under section 501(c)(3). You were formed to certify and promote E products and farms. You operate to promote E, a trademarked process. These purposes are carried out in a commercial manner and provide more than an insubstantial private benefit to your members and certification customers. Similarly, for these same reasons you do not meet the requirements of section 501(c)(5) or 501(c)(6).

Accordingly, you do not qualify for exemption under section 501(c)(3), 501(c)(5) or 501(c)(6) of the Code.

We have also considered whether you meet the requirements for exemption under any other subsection of IRC section 501. Due to the commercial nature of your activities and the benefit to your members, you do not qualify for exemption under any other subsection.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;

Letter 4036(CG) (11-2005)
Catalog Number 47630W

2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Holly Paz
Director, Exempt Organizations
Rulings and Agreements

Enclosure, Publication 892